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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

BEVERLY KING,

Plaintiff and Appellant,

v.

KRISHTA L. KING,

Objector and Respondent.

D049393

(Super. Ct. No. D383140)

APPEAL from an order of the Superior Court of San Diego County, David B. Oberholtzer, Judge. Affirmed in part, reversed in part and remanded with directions.

Beverly King appeals the family court's order denying her request for prejudgment interest and attorney fees. We affirm in part, reverse in part and remand with directions.

FACTS

Christopher and Beverly King were married in May 1986. They had one son, Gary King.¹ They separated in June 1994. Under their marital settlement agreement, Christopher agreed to maintain his life insurance policy in the net amount of \$100,000 and keep Gary as the beneficiary.

In July 1999, Christopher married Krishta King.

In May 2004, Beverly filed in the family court an order to show cause requesting that Christopher verify he had designated Gary as beneficiary of his insurance policy. Christopher submitted a declaration affirming that fact.

In March 2005, Christopher committed suicide. It was subsequently discovered Christopher had designated Krishta as the sole beneficiary of his insurance policy. The insurance company disbursed to her the entire proceeds of approximately \$472,000.

In September 2005, Beverly filed an order to show cause and to impose a constructive trust on \$100,000 of the insurance proceeds for Gary, and sought prejudgment interest and attorney fees. At a hearing on the matter, Krishta testified she did not know the details of Christopher's insurance policy or whether Gary was a designated beneficiary. Specifically, she testified, "All my husband ever told me was I was going to be taken care of should he die."

¹ We refer to the parties by their first names to avoid confusion, and do not mean any disrespect.

The trial court imposed the constructive trust, but denied Beverly's request for prejudgment interest and attorneys fees. The trial court partly based its decision on equity, stating, "Throughout these statutes and provisions, governing my decision in this matter are notations that this is a court of equity. . . . we have two innocent people here who are suffering a loss. And the \$100,000 paid to Gary will be more than enough . . . [a]nd I will not diminish the amount of money available to Krishta any further."

DISCUSSION

I.

Beverly contends she was entitled to recover prejudgment interest under Civil Code 3287, subdivision (a). "The purpose of prejudgment interest is to compensate plaintiff for loss of use of his or her property." (*Segura v. McBride* (1992) 5 Cal.App.4th 1028, 1041.) Under the general principles of equity, which the trial court is at liberty to apply, the court has discretion to impose such terms as seem just and reasonable. (*McCowen v. Pew* (1912) 18 Cal.App.482, 484-485.)

Here the trial court found, "[Christopher] deliberately deceived Beverly and the court by counterfeiting a beneficiary form which he never turned in. He simply used that to avoid trouble in court. That beneficiary designation that was submitted to the court is wrong and a fraud." Accordingly, the trial court ruled Krishta did not have unclean hands.

We conclude the trial court did not abuse its discretion, under the circumstances of this case, and based on principles of equity, to decline to assess prejudgment interest and find it would have been inequitable to make Krishta liable for prejudgment interest from

the date the policy benefits were disbursed to her. Another court stated in a marriage case dealing with a spouse who committed suicide, "We emphasize that a constructive trust action is equitable in nature. [Citation.] . . . We are guided by equitable considerations. . . . For purposes of a constructive trust action, '[n]o one can take advantage of his own wrong.' [Citation.] 'No one should suffer by the act of another.' [Citation.] 'For every wrong there is a remedy.' [Citation.] These maxims of jurisprudence serve as guideposts of equity and fairness." (*Tintoncalis v. Tintocalis* (1993) 20 Cal.App.4th 1590, 1595.)

II.

We review the attorney fees issue for abuse of discretion. (*In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1166.) The trial court's discretion is guided by statute. Here, Family Code section 2030, subd. (a)² permits an award of attorney fees in marriage dissolution proceedings in an amount "as may be reasonably necessary for the prosecution or defense of the proceeding or any proceeding related thereto." Section 2030, subd. (d) states, "Any order requiring a party who is not the spouse of another party to the proceeding to pay attorney's fees or costs shall be limited to an amount reasonably necessary to maintain or defend the action on the issues relating to that party." Section 2032, subd. (a) states the court may order attorney fees that are "just and reasonable under the relative circumstances of the respective parties." Under section 2032, subd. (b), "In determining what is just and reasonable under the relative circumstances, the court

² All further statutory references are to the Family Code unless otherwise stated.

shall take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party's case adequately." (Accord, *In re Marriage of Green* (1992) 6 Cal.App.4th 584, 593.)

"[A]lthough the trial court has considerable discretion in fashioning a need-based fee award [citation], the record must reflect that the trial court actually exercised that discretion, and considered the statutory factors in exercising that discretion." (*In re Marriage of Braud* (1996) 45 Cal.App.4th 797, 827.) Thus, it is an abuse of discretion for a trial court to deny motions for attorney fees in proceedings arising from marital dissolution without considering the needs of the requesting spouse and the ability to pay of the spouse against whom the award is sought. (*In re Matter of Cheriton* (2001) 92 Cal.App.4th 269, 315.) Here, the trial court abused its discretion by declining to apply the section 2030 criteria in ruling on Beverly's attorney fee request. Accordingly, we remand the matter for the trial court to do so.³

³ We do not take issue with the trial court's denial of Beverly's attorney fees motion to the extent Beverly relied on Probate Code sections 13554, 13550 because those sections do not include provisions for awarding attorney fees.

DISPOSITION

The order insofar as it denied the motion for attorney fees is reversed, and in all other aspects it is affirmed. The cause is remanded for further proceedings consistent with this opinion. The parties shall bear their respective costs on appeal.

O'ROURKE, J.

WE CONCUR:

BENKE, Acting P. J.

McINTYRE, J.